

WISHA Interim Operations Memorandum
Washington Department of Labor and Industries
#97-2-I

VERTICAL FOOD MIXERS IN BAKERIES AND OTHER ESTABLISHMENTS

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WISHA Policy & Technical Services

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Background:

Vertical dough mixers, such as those used in many bakeries, have been the subject of several interpretive memos during the past 12 months. Discussions of the appropriate application of various standards have tended to obscure the memos' requirements regarding hazard documentation. This memo is written to confirm previous guidance and to emphasize the importance of issuing such guarding citations *only* when the hazard has been clearly documented. The guidance found in #3 below is particularly relevant to this issue.

As indicated in WISHA Interim Memoranda #96-11-G, #96-11-H, and #96-12-A, the department has agreed to engage in rulemaking in order to clarify the application of the point-of-operation guarding requirements found in WAC 296-24-15001(3) to vertical bakery mixers. This rule making, *the impact of which will be limited to those employers subject to the Bakery Standard*, may result in a less restrictive approach to the hazards in question than reflected by current standards (the department's understanding of which was described most recently in WIM #96-11-G). For this reason, and in order to facilitate the negotiated rule making process, the department has revised its enforcement approach to vertical mixers used in bakeries.

Chapter 296-302 WAC applies specifically to machines and equipment *used within bakeries*.

WAC 296-302-03003(1) provides detail on guarding drive mechanisms in vertical mixers covered by the bakery standard through reference to WAC 296-302-03001(1) and (2). Power transmission guarding requirements found in WAC 296-24-205 address the same problems in relation to mixers not covered by the bakery standard. Point-of-operation guarding requirements for industry in general can be found in WAC 296-24-15001(3)(b), which requires that "the point of operation of machines *whose operation exposes an employee to injury* shall be guarded [emphasis added]."

This interim memo, which provides guidance to WISHA staff regarding the appropriate application of these standards in light of current interpretive and enforcement policy, incorporates and replaces WIM #96-12-A, which is hereby rescinded.

Policy:

1. For the purposes of Chapter 296-302 WAC, the department considers bakeries to be establishments or portions of establishments where *the principal activity* is the production of baked goods for retail or wholesale distribution (the bakery standard would apply, for example, to equipment dedicated to the bakery often found inside large grocery stores, but not to equipment used for multiple purposes in a restaurant even when baked goods are among those items routinely prepared).

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2. When a point of operation on a vertical mixer *used in a bakery* is not properly guarded, no citation may be issued as a result (although the inspector may choose to provide a "message" on the citation encouraging the purchase and use of a guard).
3. When a point of operation on a vertical mixer *used in an establishment other than a bakery* (such as a pizza parlor or restaurant) is not properly guarded, the inspector may cite WAC 296-24-15001(3) as appropriate and document the characteristics of the mixer that would cause serious injury (such as speed, motor strength, irregularities on the exposed shaft, nip points with the bowl, attachment of the bowl, relevant work practices, etc.).
 - a. If the employer is able to demonstrate that he or she had ordered a manufactured guard or otherwise made a credible effort to obtain proper guarding prior to the inspection, the compliance officer must not cite the violation but must instead place an appropriate message on the citation and notice.
 - b. No citation may be issued in relation to such a mixer unless the compliance officer documents the likelihood that a serious injury could occur on the particular mixer as it is used in the establishment (for example, household type mixers generally have insufficient motor strength to inflict serious injuries, nor is the bowl normally fixed sufficiently to provide a nip point; in addition, some establishments use the mixer in such a fashion that injury is unlikely, even in the absence of a guard).
4. Whenever drive mechanisms are improperly guarded on vertical mixers found in bakeries, guarding of drive mechanisms must be cited from WAC 302-03003(1) and the appropriate portion of WAC 296-302-03001 referenced on the WISHA 1b.
5. Whenever drive mechanisms are improperly guarded on vertical mixers used in establishments other than bakeries (even if used in the production of baked goods), the appropriate power transmission guarding requirements from Chapter 296-24 WAC must be cited.
6. All appealed citations to bakeries for point-of-operation guarding on vertical mixers should be vacated (with documentation indicating that the action has been taken in order to facilitate negotiated rulemaking and does not reflect an admission of error on the part of the department).